



Lamoine Board of Selectmen

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Minutes of March 21, 2013

Deputy Town Clerk Stu Marckoon called the meeting to order at 7:00 PM

Present were: Selectmen Nathan Mason, Bernie Johnson, Gary McFarland, Jo Cooper; Administrative Assistant Stu Marckoon, RSU 24 Representative Brett Jones, Planning Board members Perry Fowler, John Holt, Assessor Jane Fowler, Appeals Board member Jay Fowler, Budget Committee Member Kathleen DeFusco, Code Enforcement Officer Michael Jordan, Former Selectman Richard Fennelly Jr., Jay Sutter and Maurice Marshall. Selectman Cynthia Donaldson had informed the board prior to the meeting that she was unable to attend.

Selection of Chair – Gary nominated Jo to serve as Chair for the 2013/14 term. Nathan 2nd. **Vote in favor was 3-0 (Cooper abstained).**

Jo assumed control of the meeting.

Agenda Review – Selectmen took note of the interest in the audience to discuss Internet Access, the appointment to the Joint Municipal Board for the Frenchman Bay Shellfishing Ordinance and the signing of the gravel ordinance.

Minutes – March 7, 2013 – Gary noted one minor typographical error. Jo moved to approve the minutes with that correction. Gary 2nd. There was a brief discussion as to whether a quorum existed to approve the minutes. Stu advised that the newly elected Selectmen could vote on the minutes, even if they are not members of the board – the vote is to affirm that the minutes are an accurate summary of the meeting. **Vote in favor was 4-0.**

Expenditure Warrant 18 – Selectmen signed the warrant in the amount of \$38,334.38. Stu noted that the March snow plowing contract payment was included, as was the payoff for the 2009 fire truck loan.

Cash & Budget Report – There were no questions regarding the written reports.

Quitclaim Deed – Pamela Ouellette – Stu reported that full payment was received for the tax acquired property sale (Map 14 Lot 15-3) to Ms. Ouellette. Selectmen signed the quitclaim deed.

Internet Service (Other Business) – Selectmen took this matter out of order on the agenda. Coley Cove Road resident Jay Sutter noted that he was present a year ago to ask if something could be done about having high speed Internet extended to their subdivision road, and this visit was a follow up. He said he noted that Fairpoint was in town installing new cable, and he's made an inquiry, but they've not called him back. He said when he visited a year ago, Stu said he would contact Time Warner about re-surveying that end of Seal Point Road. Stu said he did so, but has received no answer recently.

Perry Fowler reported that Fairpoint was running fiber optic cable to a box in Marlboro and that DSL service might be available soon. Jo said the Selectmen are concerned about high speed internet availability as an equity and business development issue. Brett Jones noted that he is receiving Wireless Internet Service from Premium Choice, and that Red Zone may also be available to Mr. Sutter. A brief discussion of the various options followed.

Appointment to the Joint Municipal Board – Frenchman Bay Regional Shellfishing

– Jo moved to appoint Richard Fennelly Jr., to the Joint Municipal Board. Gary 2nd.

Vote in favor was 4-0. Mr. Fennelly swore his oath to Deputy Clerk Marckoon.

Gravel Ordinance – Jo noted that she had heard several people express concern that the just approved ordinance needs to be changed. Brett Jones said that at the end of the annual town meeting, there was strong Planning Board support to correct some deficiencies. He said the people affected are the small pit owners. He said he would like to request that the Planning Board offer some amendments in time for a June vote.

Jo asked if the Selectmen are bound to do what the town meeting voted. She said she would favor meeting with the Planning Board to try to implement getting a set of changes to the town meeting.

Planning Board Alternate Perry Fowler said it seemed like the Planning Board got tired of looking at the ordinance during its development. He said there were long discussions and the board stopped and revisited sections. He said there were big setbacks proposed and there did not seem to be any room for proposing differing setbacks. He said there are already legal things in motion against the town. He said he would like to revisit pit sizing and setbacks.

Gary asked if the 100-foot setback affects Mr. Fowler's pits more than it would a large operation. Mr. Fowler said it would. He said there are other ordinances that require a different setback. Gary said he saw some restrictive items in the ordinance that seem to impact small business. He said he would like to see the ordinance go back to the board to review some items that are detrimental to small pit owners. He said he would like to have the Selectmen and Planning Board meet and thinks that would be helpful.

Perry Fowler said he was in favor of that. Mr. Jones said it struck him as unfair that there is no allowance for grandfathered pits, and the ordinance changes the rules to having a completely new review every 3-year. He said he can't imagine a small business owner would purchase a pit if they could not rely on it being a "living pit". Mr. Fowler said that would be something to discuss. Jo said she was sympathetic and favored further discussion. She said she was concerned that the Planning Board put the ordinance forward and the Selectmen are obligated to respect the board's work. She said she heard Mr. Fowler's concern that the work was not completed. She said she had a philosophical question about whether the Selectmen could block the Town Meeting action.

Stu said the Selectmen could not overturn the decision of the town meeting. He said by signing the ordinance, the board is memorializing that it was passed by the town meeting.

Perry Fowler said there was a lot of negotiation during development of the ordinance. He said the setback issue was only touched on, and then it seemed that suddenly there was an ordinance ready for a vote. Jay fowler said the newly passed ordinance wants small gravel pit operators to go out of business. He said that everything that was done was done for the big pits. He said he doesn't understand why the ordinance was lined up against the small pit owners. He said that in 1989 he remarked that if the right people were appointed to the boards, they would be in a lot of trouble. He asked the audience to show another business that is regulated the same way that gravel pit operators are.

Jo said her suggestion was to have a procedure to look at the changes, and she hopes the Selectmen have communication and discussion with the Planning Board and they are willing to discuss it. Planning Board chair John Holt said he was sure they would be. Jo asked about the voting date in June. Brett said the ordinance is implemented the day of the Selectmen's signature. He said he hoped for a short term for proposed amendments instead of waiting for a full year. Jo said the hope is that the Selectmen and Planning Board will work together and noted that timeliness is a concern.

Jane Fowler asked what the harm was in not signing and to work with the Planning Board. She said if it were signed, the negotiations would take forever. Michael Jordan suggested that the Selectmen could get a legal opinion about signing and hold off for a couple of weeks. He said he would propose a moratorium on the gravel ordinance.

Mr. Holt said the issue of large and small pits was brought up in the meetings. He said Perry Fowler said it would not be fair to differentiate the large pits against the small pits. He said any impact would disproportionately affect the smaller pits. He said the ordinance is a land use ordinance, not a concern for the impact on business. He said the Planning Board had spoken initially about a 50-foot setback or 150-feet from any homes and provided a brief explanation of the thinking. He said for the next 3-years the gravel pit owners can get a 50-foot setback reduction, but that right is taken away after 3-years.

Mr. Jones said the ordinance does allow adjoining pits to be excavated to the boundaries. He said that many folks think of the area by the transfer station that will be one big pit once the excavation is done. He said in practice, that's not fair.

Mr. Fennelly said it would seem reasonable when revisiting the ordinance to grandfather existing pit owners. Nathan asked if there was a discussion about grandfathering. Mr. Holt said if there was, it was not a very long one. He said every pit is considered a new pit at permitting time. Nathan said that changes the whole nature of pits if grandfathering is not discussed. Mr. Holt said that was why the new ordinance had the 3-year provision. He said that gives current pit operators 3-years to work the boundaries. Mr. Jones said he's not sure if he's in favor of having someone tell him what kind of time line would be put on the work he wants to do. Perry Fowler said only he, Mr. Holt, and Mr. Jordan discussed the setback issue.

Stu explained the ordinance process. He said an attested copy is provided to town meeting which in this case passed the ordinance. He said that ordinance is considered in effect, but the town meeting can amend it at any time. Bernie said three members of the Planning Board expressed at town meeting that they wanted to revisit the ordinance. He said there is a will to do that. Perry said he'd like to try it. Jo said she hoped the Planning Board would work with the Selectmen.

Stu presented a pair of possible revisions on setbacks and the escrow account. Mr. Holt said they could chew things over for hours on what the definition of a small pit might be. He said a workshop could open up Pandora's Box. He said amendments are not likely to happen in two meetings. Mr. Jordan noted that the state ordinance classifies pits as small, medium and large, and perhaps those definitions would fit into the local ordinance. Mrs. Fowler said a size could depend on the size of the operation. Jay Fowler said in 3-years his business does not have the means to excavate all the material to the 50-foot setback. He said the new ordinance is making people go faster. He said requiring a completely new permit every three years requires a lot of money and thought. He said all the fighting is about what one person thinks or likes. He said people are not listening to what they are saying. He said the ordinance and road postings limit how they can work, and people don't understand that. He said the new ordinance is discriminatory.

Mr. Jones said he would like to hear whether the current permits are operating under the new ordinance or the old ordinance. Jo said she would like to have that discussion when the boards get together. She said she would like to set a date for a workshop and to let all parties know. Mr. Holt said the current gravel permit is subject to the ordinance until it expires. He said any application in the pipeline is subject to the old ordinance. He said any new permit issue has the 3-year timeline to get the 50-foot setback permission.

Jo said she would like to set a date. Bernie said he was concerned about Mrs. Fowler's contention that it would take a long time to get done if the amendment process were slow walked. He urged both board to try to make that not happen. Jo said she is interested in trying to do things fairly. Mr. Fowler said folks driving down Route 184 cannot even see their gravel pits from the road. She said their company believes in conservation.

Jo asked about a meeting date. Stu suggested that it not be a regular meeting night for either board. Mr. Holt suggested Tuesday, April 16th at 7PM. He asked who would be in charge. He said there needs to be an agreement on how to conduct the meeting and that could be discussed at the regular meetings. He said he would discuss that at the Planning Board meeting. Jo said she is concerned about getting input from concerned parties. Stu said written ideas should be encouraged.

Discussion turned to signing or not signing the ordinance. Jo moved to table signing the ordinance until the April 4, 2013 meeting. Gary 2nd. **Vote in favor was 4-0.** Stu said he would send an e-mail to Maine Municipal Association for an opinion. Bernie said there needs to be a way to include experts for their knowledge on gravel issues. Mr. Holt said

it needs to be a public discussion. Jo said her concern was to get together with the Planning Board

Selectmen's Rules of Procedure – Stu said the only significant change was the names of the Selectmen. Jo moved to adopt the rules of procedure as printed. Gary 2nd. **Vote in favor was 4-0, Selectmen signed the rules.**

Disbursement Policy – Stu reported there was nothing different from the previous year. Garry moved to approve the policy. Bernie 2nd. **Vote in favor was 4-0, Selectmen signed the policy.**

Fees – Stu noted that the demo permit fees were removed from the schedule since the town was no longer issuing such permits. Gary moved to approve the fees. Nathan 2nd. **Vote in favor was 4-0, Selectmen signed the fee schedule.**

Dog Registrations – Jo said Stu had mentioned about having an amnesty day for those folks who were late in registering their dogs. She said the concern was that some have already paid the late fee. Stu said the head of the State Animal Welfare Department had given the idea. Jo said she was not in favor, and none of the other Selectmen expressed a desire to do that. Stu said the clerk will send out the late notices.

Drug Take back Day – Stu reported the Hancock County Sheriff's Department will be on hand at the town hall on April 27th to collect unused prescription drugs. He said Chief Deputy Bishop had spoken with him recently about the idea, and they would be promoting the town hall as a drop off site.

Lamoine Quarterly – Stu reported he had the quarterly about half finished, and hoped to finish it and e-mail it prior to the next regular meeting with final approval for printing on April 4th.

Snow Plowing Contract Request for Proposal – Jo said everything should be ready to send out the RFP for the plowing contract. She said the Selectmen have reviewed it several times. Gary agreed. Jo moved to put the snow plowing contract out to bid as of April 1, 2013. Gary 2nd. **Vote in favor was 4-0.**

Vacancies – Stu noted that a vacancy will exist on the Budget Committee when Debbie Verrill-McFarland's term is up on June 30th. He asked if the Selectmen wished to offer the full position to Marion McDevitt and advertise for an alternate member. Selectmen felt that would be a good idea.

Stu noted the Local School Advisory Committee will have to have a vacancy now that Nathan is a Selectman and really should not be the supervisor of himself. He also noted that Tammy Dickey has not attended any meetings in the past year. He said he would ask Brett Jones if he wished to have the Selectboard declare a vacancy and advertise for two new members.

Stu noted that Nathan is also a Parks Commissioner and his term expires on June 30th.

Advertisements will be made for replacement personnel.

Town Meeting Follow Up – Selectmen signed letters thanking Samantha Mason, Erin White and Jacquie Goebel for making signs to advertise the town meeting. Stu noted that he installed them during one wind storm, and a wind and rain storm followed that flew the re-installed signs off. Gary noted that turnout for town meeting was very good and the meeting ran very efficiently.

Shellfish Ordinance/Agreement - Selectmen signed the ordinance and agreement with the amendments that were approved at the town meeting.

Site Plan Review Ordinance – Selectmen opted to hold off signing the ordinance change in conjunction with the Gravel Ordinance pending a legal opinion from Maine Municipal Association.

Fire Truck Purchase – Stu reported Fire Chief Skip Smith planned to attend the next regular meeting so that everyone is on the same page for the RFP for a truck chassis and body for the fire truck approved at town meeting.

Comprehensive Planning Committee – The size of the committee was discussed along with a goal of having a committee appointed by the first meeting in May. Bernie asked if this was something the town needed to do. Nathan asked about guidance. Stu said the town meeting approved the question and that the State of Maine has a person who helps. He said generally a comprehensive plan is developed with help of a consultant. Mr. Jordan suggested members of boards such as the Planning Board should serve on the committee along with members of the public. Selectmen discussed having a member of the Planning Board, the Conservation Commission, a Selectman, someone from the Education Community and members at large. They asked Stu to draw up a formal proposal to consider at the next meeting.

MUBEC Vote – Stu suggested that the approval vote on the MUBEC question be officially forwarded to the Planning Board through the Code Enforcement Officer. There was no objection.

Fire Truck Payoff – Stu reported that the warrant signed earlier in the evening contained the town's portion of the loan on the 2010 brush truck. He said the fire department will contribute its \$7,000.00 in April, and that would pay the loan in full.

RSU 24 Withdrawal – Gary reported the withdrawal committee met with the RSU 24 Board and the Hancock withdrawal committee last night. He said the City of Ellsworth had signed the withdrawal agreement early this morning and hand delivered it to the Commissioner of Education. He said he expected the final draft for Hancock and Lamoine might be ready for signature next week.

Gary reported that Ellsworth withdrawal chair Mark Rosborough spoke with Deputy Education Commissioner Jim Rier about trying to coordinate all three communities voting together. He said it is getting to crunch time, but it looks like it will happen.

Gary said he spoke with State Representative Richard Malaby about the voter turnout requirement which presently requires that 50% of the turnout of the last gubernatorial election plus 1 is required to make any withdrawal vote valid. He said Mr. Malaby reported that any change in the law is unlikely, so voter turnout is very important.

He said the withdrawal committee is striving for two informational forums and a public hearing prior to any vote. He said he was pretty positive the Department of Education would accept the Ellsworth withdrawal plan, and if so, they would likely accept Lamoine's. He said the plans were consistent among the three towns. He said a lot of work is needed to figure out how much it will cost to run the school independently.

Nathan asked if the withdrawal date would change. Gary said no, the target date would be June 30, 2014. He said the more time between that date and a vote, the better off the town is. He said if approved, a school committee would have to be appointed by the Selectmen. He said food services would be shared with RSU 24. He said the new school committee would have to make all the plans for transportation and special education. A discussion followed on the potential voting date and timing.

Returnables – Jo moved to award the returnable container proceeds to the Lamoine School Music program for July, 2013. Nathan 2nd. **Vote in favor was 4-0.**

Legislative Hearing – Stu reported the appropriations committee is holding a hearing in Brewer on Monday. Jo said she thought about going. Gary said Representative Malaby told him they are getting a lot of letters and folks are being heard. He said Mr. Malaby confirmed he had received Lamoine's resolve.

Next Meeting Dates – Jo listed the next regular meeting dates as April 4 and 18, May 2 and 6 and June 6 and 20.

There were no items for executive session.

There being no further business to conduct, the meeting adjourned at 8:45 PM.

Respectfully submitted,

Stu Marckoon, Adm. Asst. to the Selectmen